

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

v.

ZACKARY ELLIS SANDERS,

Defendant.

Case No. 1:20-cr-00143
The Honorable Judge Ellis

Pretrial Conference: April 9, 2021
Trial: July 12, 2021

**MEMORANDUM IN SUPPORT OF CONSENT MOTION
TO CONTINUE PRETRIAL CONFERENCE AND MOTIONS HEARING**

The defendant, Zackary Ellis Sanders, by counsel, and with consent of the government, submits this Memorandum in support of his Consent Motion to Continue Hearing, which is presently scheduled to commence on April 9, 2021, at 10:00 a.m.

BACKGROUND

At the hearing on April 2, 2021, the Court ordered that “the pretrial conference in this matter currently scheduled for April 9, 2021 will, if necessary, be continued to a later to accommodate defendant’s treatment.” Order (ECF No. 286) at 2. Because Mr. Sanders will be undergoing medical treatment this week, including on Friday, April 9, 2021, it is necessary that the pretrial conference be rescheduled to avoid a clash. Because of the substantive nature of the pretrial conference, Mr. Sanders’s presence is required and should not be waived.

ARGUMENT

The decision to grant or deny a continuance is committed to the sound discretion of the trial court. *United States v. Gaither*, 527 F.2d 456, 457 (4th Cir. 1975). However, “while timely resolutions of disputes are important, there cannot be an ‘unreasoning and arbitrary’ insistence on expeditiousness in the face of a justifiable request for delay.” *United States v. Colon*, 975 F.2d

128, 130 (4th Cir. 1992); *see also United States v. LaRouche*, 896 F.2d 815, 824 (4th Cir. 1990) (noting that the later a motion for a continuance is made, the more likely it is made for dilatory tactics and thus it is less likely that the district court arbitrarily denied the continuance); *In re: Court Operations Under The Exigent Circumstances Created By The Outbreak Of Coronavirus Disease 2019 (Covid-19): Revised Schedule For The Resumption Of Criminal Jury Trials*, Case No. 2:20mc7, (E.D.Va.), General Order No. 2020-19, at p. 16, June 30, 2020 (“*the Court cannot prioritize speed over the critical steps needed to preserve every accused defendant’s right to a fair trial*”) (emphasis added).

A defendant has a Due Process right to be present when it is required for the fairness of the proceeding. *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (“[A] defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.”). Absence at such a stage denies a defendant the opportunity to give advice or suggestions to counsel. *See, e.g., United States v. Rolle*, 204 F.3d 133, 136 (4th Cir. 2000) (requiring defendant’s presence during *voir dire* of potential jurors).

Here, the pretrial conference will address a number of substantive issues directly relevant to trial and Mr. Sanders’s ability to present a defense. As a result, this is a critical stage of the criminal proceedings where Mr. Sanders’s presence is required to ensure the fairness of such proceedings by allowing him to assist his counsel as needed.

A continuance of the hearing will not prejudice the government or harm the public. The public interest is best served by ensuring that Mr. Sanders is afforded a fair hearing for the reasons previously stated. That interest is particularly heightened when an accused faces a

lengthy period of incarceration and the associated collateral consequences of a felony conviction, including lifetime registration as a sex offender.

CONCLUSION

For all of the aforementioned reasons, Mr. Sanders respectfully requests this Court enter an Order removing the pretrial conference from the Court's April 9, 2021 docket and set a new hearing date for May 7, May 21, or May 28, 2021.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2021, the foregoing was served electronically on counsel of record through the U.S. District Court for the Eastern District of Virginia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Nina J. Ginsberg
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